

US EPA ARCHIVE DOCUMENT

**Memorandum of Agreement Between the US EPA and INVISTA  
for the Management of Post-review Discoveries of Historic Properties Resulting from Activities  
Authorized by the EPA-issued Greenhouse Gas Prevention of Significant Deterioration (PSD)  
Permit in the West Powerhouse at the Victoria Plant in Victoria, Texas**

This Memorandum of Agreement (AGREEMENT) is being entered into in connection with the Environmental Protection Agency's (EPA) consideration of the INVISTA S.à.r.l. (INVISTA) a Greenhouse gas (GHG) prevention of significant deterioration (PSD) permit application for the installation of nitrogen oxide (NO<sub>x</sub>) controls and modifications to existing boilers and fuel pipe system within the existing West Powerhouse at the INVISTA Victoria Plant in Victoria, Texas ("undertaking"). In accordance with obligations under Section 106 of the National Historic Preservation Act (NHPA), EPA reviewed and adopted a *Cultural Assessment in Support of Greenhouse Gas Permitting for Required WBH Boilers and NO<sub>x</sub> Controls* (January 18, 2013) and *An Addendum to the Cultural Assessment in Support of Greenhouse Gas Permitting for Required WBH Boilers and NO<sub>x</sub> Controls* (February 27, 2013) ("Report") prepared by INVISTA's contracted archaeologist. During the course of that review, and as indicated in the Report, the presence of extensive and significant burial grounds in the general vicinity outside the Area of Potential Effect (APE) were highlighted. In consultation with the State Historic Preservation Officer (SHPO), additional field work was performed on February 12, 2013, and no indications of archaeological resources, including human remains, were identified within the direct APE. EPA completed consultation with the SHPO and received concurrence on March 28, 2013 with EPA's determination of no adverse effect for this undertaking. (See letter of concurrence dated March 21, 2013.) As a precaution, EPA has determined that although all appropriate steps were taken to identify potential historic properties that may be present in the area of potential effect, because of the history of the site, undiscovered and undocumented historic properties may be encountered during construction activities at the facility.

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This AGREEMENT is intended to ensure compliance with NHPA regulations 36 CFR 800.13 for dealing with post-review discoveries. It sets forth the procedures that INVISTA and EPA agree to carry out in the event that such post-review discoveries are made.

INVISTA agrees to have a qualified archaeologist on stand-by to respond immediately in the event of a post review discovery.

If previously unidentified potential historic properties are discovered and construction has not yet commenced, EPA and INVISTA shall consult with the SHPO in accordance with 36 CFR 800.6. If construction has commenced EPA and INVISTA agree to proceed in accordance with the requirements of 36 CFR 800.13 as follows:

1. For all previously unidentified potential historic properties discovered during construction, the on-site INVISTA representative shall stop construction activities in the immediate area of the find to the extent stoppage will not create an undue risk of harm to human health or the environment and notify the designated on-call qualified archaeologist who has previously been contracted to provide service.

The archaeologist will examine the find, assess its significance, and conduct preliminary recordation, as necessary.

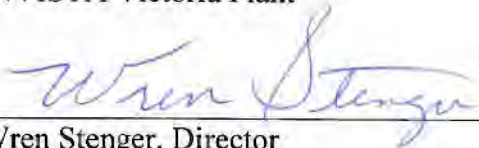
2. Within one business day of the identification of a historic property, INVISTA shall contact Jeff Robinson, Chief, EPA Region 6 Air Permitting Section at (214) 665-7250 about the discovery. Within one (1) business day of identification of a historic property, INVISTA's contracted archaeologist shall assess the discovery and provide EPA with an assessment of National Register eligibility of the property and proposed actions to resolve any adverse effects prior to commencement or re-commencement of construction in the area of discovery. In the event that INVISTA's contracted archeologist is unable to complete an assessment and recommend proposed actions to resolve any adverse effects within (1) business day of discovery, (s)he shall so notify EPA, and proceed to complete the assessment.
3. Within two (2) business days of identification of a historic property, EPA shall notify the SHPO and any Indian tribe that might attach religious and cultural significance to the affected property, and the Advisory Council on Historic Preservation (ACHP), if necessary. Potentially affected Indian tribes include but are not limited to: Tonkawa Tribe of Oklahoma, Ysleta del Sur Pueblo, and the United Keetoowah Band of Cherokee Indians in Oklahoma. Within one (1) business day of receipt of a completed assessment from INVISTA's contracted archeologist on National Register eligibility of the property and the proposed actions to resolve any adverse effects, if not previously provided pursuant to section 2, EPA will provide additional notification to the SHPO, any Indian tribe, and the ACHP, as necessary.
4. EPA shall request that the SHPO, Indian tribe, and the ACHP respond with any recommendations within two (2) business days of EPA's notification of a completed assessment. EPA shall take into account all consulting parties' recommendations regarding National Register eligibility and proposed actions to mitigate any adverse effects when making its final decision regarding effects and/or mitigation. EPA shall provide the SHPO, any relevant interested Indian tribes, and the ACHP a report of the actions taken by EPA or INVISTA including any mitigation measures carried out by INVISTA when completed.
5. EPA shall document in writing its decisions regarding effects and/or mitigation and shall communicate those decisions to INVISTA in a timely manner. INVISTA shall not re-commence construction activities in the immediate area of the find until it receives final notice of a final decision regarding effects and/or mitigation from EPA.



Paul B. Hughes, Plant Manager  
INVISTA Victoria Plant

5/15/13

Date



Wren Stenger, Director  
Multimedia Planning and Permitting Division  
EPA Region 6

5/14/2013

Date